

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

**APPEAL FORM**

To: General Counsel  
Attn: Office of Appeals  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570-0001

Date: May 12, 2022

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

Allied Services LLC d/b/a Allied Waste Services of Jefferson City

Case Name(s).

14-CA-289931

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

  
\_\_\_\_\_  
(Signature)

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May 12, 2022

**Via Electronic Filing**  
General Counsel  
Attn: Office of Appeals  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570-0001

**RE:** *Allied Services LLC d/b/a Allied Waste, 14-CA-289931*

Dear General Counsel Abruzzo:

Please accept this letter as Charging Party's position in connection with its appeal in the above referenced matter.

On April 28, 2022, Region 14 issued its decision refusing to issue a complaint and dismissing charges alleging violations of Section 8(a)(1) and (5) of the Act. The Region concluded that the Employer did not violate the Act when it withdrew recognition from the Union and subsequently made unilateral modifications to terms and conditions of employment. In applying *Shaw's Supermarket*, the Region concluded that the Employer's actions were proper because they occurred during the fourth year of a five year collective bargaining agreement ("CBA"). Charging Party respectfully requests the General Counsel seek to overturn or modify *Shaw's Supermarket* and direct the Region issue a Complaint asserting that the Employer violated Sections 8(a)(1) and (5) of the Act by withdrawing recognition during the term of the CBA and subsequently committing unfair labor practice charges meant to undermine the status of the Union.

**A. Factual Backdrop.**

Teamsters Local Union No. 833 (the "Union") and Allied Services LLC d/b/a Allied Waste Services of Jefferson City (the "Employer") were signatory to a collective bargaining agreement that was effective from November 1, 2017 through October 31, 2022. On January 27, 2022, the Employer withdrew recognition from the Union. The Employer's withdrawal of

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recognition was premised upon a petition signed by a majority of bargaining unit employees indicating they no longer wished to be represented by the Union.

On January 28, 2022, the Employer, through its representatives, told employees that the Employer would no longer recognize the Union as the employee's bargaining representative. The Employer further stated that it would provide better working conditions as a result of the employees no longer being represented by the Union. Further, on January 28, 2022, the Employer, through its representatives, interrogated employees regarding their and other's protected concerted activities. On that same day, the Employer removed the Union's posting's from the Union bulletin boards and told employees that the Union could no longer conduct business on its property. Finally, immediately upon issuing its withdrawal of recognition the Employer modified work rules and promised employees better pay and working conditions.

The Region determined that the Employer's withdrawal of recognition was lawful under *Shaw's Supermarkets, Inc.*, 350 NLRB 585 (2007). The Region also concluded that the Employer's post withdrawal activity was excused because the Employer engaged in such conduct after it informed the Union that it was immediately withdrawing recognition.

**B. *Shaw Supermarkets, Inc.* Fails to Effectuate the Purposes of the Act.**

The Region relies upon *Shaw's Supermarket* to support the contention that the Employer lawfully withdrew recognition from the Union prior to the expiration of the CBA, but after the third year of the contract. To the extent *Shaw's Supermarket* supports this conclusion, the Union believes the General Counsel should revisit, reconsider and seek to overturn the standard established therein.

In the instant matter, there is no dispute that the parties were signatory to a collective bargaining agreement with a five (5) year term. In addition, there is no dispute that the contract-bar was no longer in effect, as the parties were beyond the third year of their CBA. Thus, there was nothing preventing employees from exercising their right to file a decertification petition. But to permit the Employer to engage in an immediate withdrawal of recognition, where a collective bargaining agreement was in place, has a more insidious result. The result is that the Employer is permitted to immediately withdraw recognition, terminate the collective bargaining agreement, and then take a series of actions meant to undermine the Union. As applied here, the Employer was permitted to promise benefits, engage in conduct meant to chill union activity, and make unilateral modifications to terms and conditions of employment. This was all meant to harm the Union's standing in the eyes of the bargaining unit and ensure the Employer rooted out any Union support. Significantly, the Employer took these actions during a time when the parties were purportedly parties to a legally binding contract.

Compare this result with that of an anticipatory withdrawal made during the term of a three year collective bargaining agreement. Under well-established precedent, an employer that receives evidence, within a reasonable period of time before its existing contract expires, that the union representing employees no longer enjoys majority support may give notice that it will withdraw recognition from the union **when the contract expires**. Anticipatory repudiation – whether viewed in the context of the misguided decision in *Johnson Controls*, 368 NLRB No. 20 (2019) or more appropriately decided *Levitz Furniture*, 333 NLRB 717 (2001) – requires the employer to continue to recognize and abide by the collective bargaining agreement in place until its expiration. Significantly, under either the *Johnson Controls* or *Levitz Furniture* framework of anticipatory repudiation, the contract still remains in effect and the Union is provided an opportunity to refute the employer's repudiation. Here, under the framework established in *Shaw's Supermarket* the Union is given no such real opportunity because the Employer is permitted to terminate the collective bargaining agreement and take unilateral actions meant to undermine union support.

### **C. The Employer's Post Withdrawal Conduct Taints the Ability of the Union to Petition For a Free and Fair Election or Otherwise Defeat the Withdrawal.**

The Employer's post-withdrawal conduct assured that any desire by employees or the Union to refute the Employer's withdrawal or file a petition and hold a free and fair election would be futile. Based on the Region's determination, the Employer may immediately engage in a course of conduct to so undermine the Union that it taints any effort by the Union to prove or establish its majority status.

The Region's decision to dismiss references that following the Employer's withdrawal of recognition, the Employer engaged in the following conduct: (1) informed employees that it would no longer recognize the Union as their collective bargaining representative; (2) promised employees better working conditions as a result of no longer being represented by the Union; (3) interrogated employees about their own and other employees' protected concerted activity and/or Union activity and sentiment; (4) remove the Union's physical postings from the Union bulletin boards; (5) told employees and/or maintained a policy that the Union could no longer conduct business on its property; and (6) unilaterally changed employees' terms and conditions of employment. **Yet, none of this conduct was deemed unlawful because it occurred after the Employer's withdrawal of recognition.** So, the Employer may engage in, what would otherwise be unlawful conduct, because there was no contract bar in place and it was permitted to immediately withdraw. Such a result does not effectuate the purposes of the Act and does not ensure employees are protected in the exercise of their Section 7 rights.

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Permitting an Employer to engage in such conduct during the term of the CBA undermines the Act and the Union's ability to refute or defeat the Employer's withdrawal of recognition. The Employer has been permitted to engage in a course of conduct that undermines the Union's standing to the bargaining unit and, as a result, makes it a virtual impossibility for the Union to file a petition and have a free and fair election or otherwise defeat the Employer's withdrawal. *Shaw's Supermarkets*, as applied here, leaves the Union and employees without defense or recourse.

The contrast in how a withdrawal of recognition is handled in a *Levitz/Johnson Controls* context and here makes little sense. In both scenarios there is a contract in place. In both scenarios the employer has purportedly obtained objective evidence that the union has lost majority status. The only distinction is here there was no contract bar in place. It is the Union's position that in the context of a withdrawal of recognition the notion that the mere lack of a contract bar should not necessitate such varied outcomes.

**D. Conclusion.**

The Union respectfully requests the General Counsel review and seek to set aside the standards established in *Shaw's Supermarket*. The Union urges the General Counsel take the position that a contract of more than three years' duration should act as a bar to the withdrawal of recognition by an employer during the term of the agreement. As seen in the instant matter, the *Shaw's Supermarket* paradigm allows an employer to immediately engage in conduct that so undermines a Union as to make it incapable of legitimately refuting or defeating the employer's contention of a loss of majority status.

In light of the foregoing, Charging Party respectfully requests that the Office of Appeals remand this case with instructions to the Region to issue a complaint asserting violations of Sections 8(a)(1) and (5) of the Act.

Yours truly,

A handwritten signature in black ink, appearing to read 'Michael E. Amash', written over a horizontal line.

Michael E. Amash